

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
REGIONAL HEARING
4/1/02

IN THE MATTER OF:) Docket No. CAA-05- 2002 -0 01 6
)
Bretford Manufacturing, Inc.) '02 SEP 25 P1:32
Franklin Park, Illinois) Proceeding to Assess a
) Civil Penalty under
) Section 113(d) of the
) Clean Air Act PROTECTION AGENCY
Respondent.) REGION V
) 42 U.S.C. § 7413(d)
)
)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Bretford Manufacturing, Inc., 11000 Seymour Avenue, Franklin Park, Franklin Park, Illinois, 60131, (Bretford).

Statutory and Regulatory Background

4. On May 19, 1998, U.S. EPA approved the rules for controlling volatile organic material (VOM) emissions from wood furniture coating operations in the Chicago and Metro East ozone non-attainment areas as set forth in 35 Ill. Admin. Code 218.204 et. seq. as part of the federally-enforceable SIP for the State of Illinois. 63 Fed Reg 27489 (May 19, 1998).

5. The limits set forth in the rule apply to a source's wood furniture coating lines if the source contains process

emissions units, which as a group have a potential to emit 22.7 Mg (25 tons) or more of VOM per calendar year and have not limited emissions to less than that through production capacity limitations contained in a federally enforceable operating permit or SIP revision. 35 Ill. Admin. Code 218.208(2)(c).

6. 35 Ill. Admin. Code 218.204 sets forth the VOM emission limitations for wood furniture coaters, specifying that no owner or operator of a coating line shall apply at any time any coating in which the VOM content exceeds the emission limitations for the specified coating.

7. The emission limitation for wood furniture topcoats, is 0.8 lb VOM/lb solid. 35 Ill. Admin. Code 218.204 (1)(2)(A).

8. The emission limitation for wood furniture sealers and topcoats, is 1.9 lb VOM/lb solid for a non-acid-cured alkyd amino vinyl sealer. 35 Ill. Admin. Code 218.204 (1)(2)(B)(i).

9. U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

10. Section 113(d)(1) limits U.S. EPA's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator of U.S. EPA and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator of U.S. EPA and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

12. Paragraphs 1-11 are incorporated herein by reference.

13. Respondent is an Illinois corporation.

14. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. Respondent owns and operates a facility located at 11000 Seymour Avenue, Franklin Park, Illinois, 60131("facility").

16. Respondent's facility includes wood furniture coating lines.

17. Respondent's wood furniture coating lines emit volatile organic materials (VOM).

18. Respondent's wood furniture coating lines include emission units.

19. Respondent is the "owner or operator" of a "coating line" containing "emission units" as those terms are defined at 35 Ill. Admin. Code 211 et seq.

20. Respondent's coating lines have the potential to emit greater than 25 tons or more of VOM per calendar year.

21. Respondent's facility is a "stationary source" as defined at Section 112(a)(3) of the Act, 42 U.S.C. § 7412(a)(3).

22. On September 27, 2001, U.S. EPA issued a Notice of Violation (NOV) to Respondent for its alleged violations of the Illinois SIP.

23. On November 5, 2001, U.S. EPA held a conference with Respondent regarding the September 27, 2001 NOV.

Count I

24. Paragraphs 1-23 are incorporated herein by reference.

25. On and after July 20, 1998, Respondent used two different topcoats at its wood furniture coating line, with a VOM content of 0.8 lb VOM/lb solid or more. Topcoat No. 16013 has a VOM content of 2.95 lb VOM/lb solid; Topcoat No. 16183 with catalyst AT-16183 has a VOM content of 2.89 lb VOM/lb solid.

26. Respondent's use of these two topcoats at its wood furniture coating lines was in violation of the emission limitation for wood furniture coaters at Ill. Admin. Code 218.204 (1)(2)(A), and the federally-approved Illinois SIP.

Count II

27. Paragraphs 1-23 are incorporated herein by reference.

28. On and after July 20, 1998, Respondent used one non-acid-cured alkyd amino vinyl sealer (No. 15912) at its wood furniture coating line, with a VOM content of 1.9 lb VOM/lb solid or more. Sanding sealer No. 15912 has a VOM content of 3.53 lb VOM/lb solid.

29. Respondent's use of this sealer at its wood furniture coating lines was in violation of the emission limitations for wood furniture coaters at 35 Ill. Admin. Code 218.204 (1)(2)(B)(i), and the federally-approved Illinois SIP.

Proposed Civil Penalty

30. U.S. EPA must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

31. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes a civil penalty against Respondent of \$ 59,000. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

32. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

33. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

34. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

35. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Deborah Carlson, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Carlson at (312)353-6121. Ms. Carlson's address is:

Office of Regional Counsel (C-14J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

Opportunity to Request a Hearing

36. U.S. EPA must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed below.

Answer

37. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified, above, and must serve copies of the written answer on the other parties.

38. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and Federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or Federal legal holiday, the time period extends to the next business day.

39. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

40. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

41. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;

- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed above.

42. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

43. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Deborah Carlson at the address or phone number specified, above.

44. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty

simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

45. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/25/2002
Date



Stephen Rothblatt, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of Bretford Manufacturing Inc.

Docket No.

CAA-05- 2002 -0 01 6

CERTIFICATE OF SERVICE

RECEIVED
REGIONAL HEARING
CLERK

I, Betty Williams, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number **CAA-05- 2002 -0 01 6** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

William J. Browne, Jr., Director of Operations
Bretford Manufacturing, Inc.
11000 Seymour Avenue
Franklin Park, Illinois 60131


Jeryl L. Olson, Esq.
Seyfarth Shaw
Suite 4200
55 E. Monroe St.
Chicago, Illinois 60603-5803

I also certify that copies of the Administrative Complaint were sent by First class Mail to:

Julie Armitage, Acting Manager
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Harish Narayen, Acting Regional Manager
Region I
Illinois Environmental Protection Agency
9511 W. Harrison Street
Des Plaines, Illinois 60016

on the 25th day of September, 2002.


Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 70993400 0000 9586 8701